Supreme Court, U.S.
FILED

09-971 OCT 21 2009

No. _____ OFFICE OF THE CLERK

In the

SUPREME COURT OF THE UNITED STATES

*

JAMES MARSHALL,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

*

On Petition For A Writ Of Certiorari To The Third District Court of Appeal Of Florida

*

PETITION FOR WRIT OF CERTIORARI

*

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QUESTION PRESENTED

1. WHETHER THE THIRD DISTRICT COURT OF APPEAL OF FLORIDA ERRED BY FINDING PETITIONER'S REQUEST FOR SELF-REPRESENTATION WAS EQUIVOCAL.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

James Marshall is an individual who was the defendant in the proceedings in the state court in the State of Florida and the appellant in proceedings in the Third District Court of Appeal of Florida.

As this was a criminal proceeding, the State of Florida was the prosecuting party.

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The decision of the District Court of Appeal of Florida, Third District is reproduced in the Appendix at App.1, and cited as Marshall v. State, 2009 WL 1035338 (Fla. App. 3 Dist.). The opinion after rehearing is reproduced in the Appendix at App.2, and cited as Marshall v. State, 15 So.3rd 811(Fla. 3d DCA 2009).

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STATEMENT OF JURISDICTION

The Florida appellate court entered its *per curiam* opinion on March 25, 2009. Rehearing was granted and the court issued its written opinion on July 22, 2009. Florida Supreme Court jurisdiction to review the appellate decision was not available. Petitioner invokes the jurisdiction of this Court pursuant to 28 U.S.C. §1257(a) and Supreme Court Rule 13.1.

*

CONSTITUTIONAL PROVISIONS INVOLVED

The Constitutional provisions involved include the Sixth and Fourteenth Amendments to the United States Constitution, which provides as follows:

The Sixth Amendment:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an

impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

The Fourteenth Amendment:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of laws.

*

STATEMENT OF THE CASE

A. Introduction:

This action arose from an information charging Petitioner with Second-Degree Murder for the strangulation death of *Delores Myers*, which occurred on April 2, 2004 (R1.12). On May 13, 2004, however, the State filed an amended information changing only the name of the victim to that of *Marie Sanders* (R1.16-17). Appellant was determined to be indigent by the court and conflict counsel was appointed to represent him (R1.19). Petitioner was tried, convicted and sentenced. The conviction and sentence was affirmed after rehearing on appeal.

B. Facts and Proceedings:

On April 2, 2004, Marie Sanders (Sanders) slept in her bedroom that she shared with her friend, Daisy Hicks (Hicks), in a house that she shared with her daughter, Jowanna Washington, her brother, Clarence Sanders, her granddaughter, Shemeria Brown and six kids (T.237-239). Petitioner was Jowanna's boyfriend and was at the residence that evening when Hicks went to bed (T.241). Hicks was not sure what time Sanders came to bed but knew that Sanders always locked the bedroom door when she went to bed (T.242). Hicks was awaken by the sounds of someone hollering. When she woke up Petitioner was kicking on the door and then she observed Petitioner on top of Sanders (T.243-244). Hicks tried to stop Petitioner from choking Sanders but was not able (T.244). Hicks ran outside of the room for help (T.244). Hicks observed Petitioner

choking Sanders (T.245).

Shermeria Brown (Brown), the daughter of Jawanna Washington (Washington) also observed Petitioner at her grandmother's residence on April 2, 2004 (T.257). She recalled seeing Petitioner at 3:00 a.m. prior to going to sleep (T.257). She was awakened by the screaming and yelling by Sanders (T.258). Brown called the police after seeing Petitioner choking Sanders (T.258-259). Brown tried to stop Petitioner from choking Sanders by pushing and stabbing him with a butter knife and by hitting him with a frying pan but was unable to do so (T.259-263; T.280). Brown observed Sanders when she fell backwards and stopped screaming (T.264). Brown did not recall Hicks being present at the residence that evening (T.277), but say her the following morning (T.283). Petitioner was the overnight guest of Washington, Brown's mother (T.282).

Miami-Dade Police Officers Damon Reynolds and Mike Phillips were dispatched at 6:00 a.m. and arrived at the residence at 6:05 a.m. and observed several people yelling and screaming "He's inside" (T.286). At that time, Officers Reynolds, Phillips and Angelo entered the residence and observed Petitioner on top of Sanders choking her. Petitioner's underwear was pulled down below his buttocks and he had no other clothes on (T.287-288, 311, 315). At that time, all the officers pulled their firearms and pointed them at Petitioner while ordering him to show them his hands (T.290, 311). Petitioner was then placed under arrest and handcuffed (T.290, 315). Officer Reynolds and Officer Dowd attempted to administer CPR to Sanders by using an Ambu bag and later a portable

defibrillator until fire rescue arrived (T.291-292). Fire rescue was unable to revive Brown and she was pronounced dead (T.292).

Dr. Kenneth Hutchins, an Associate Medical Examiner
with the Miami-Dade Medical Examiner Department went to the scene to view Sanders' body (T.323). He also performed the autopsy of Sanders and determined that the cause of death was mechanical asphyxia (T.323, 328, 340). According to Dr. Hutchins, it would have taken between 10 to 15 seconds for Sanders to become unconscious and three to four minutes to become brain dead (T.340).

On April 23, 2004, Petitioner was charged by information with Second-Degree Murder for the strangulation death of *Delores Myers*, which occurred on April 2, 2004 (R1.12). On May 13, 2004, however, the State filed an amended information changing only the name of the victim to that of *Marie Sanders* (R1.16-17). Appellant was determined to be indigent by the court and conflict counsel was appointed to represent him (R1.19).

On April 6, 2006, more than two years after Petitioner was arrested, the State filed a motion asking the Court to inquire as to the effectiveness of counsel's performance on behalf of Petitioner (R1.24). In its motion, the State advised the court that since his appointment, defense counsel had only deposed one State witness and that he has failed to file a motion to suppress the evidence or file his notice of intent to rely on insanity (R1.24). The State advised the court that there was evidence to suggest that

Petitioner was under the influence of drugs and alcohol at the time of the offense and that cocaine psychosis could be used as a mental defect or infirmity for a defense of insanity (R1.24).

On July 17, 2006, the State filed its Motion for Timely Notice of Intent to Rely on Insanity again advising the court that defense counsel had not complied with his statement to the court that he would file his notice of intent to rely on insanity by July 10, 2006 (R1.29). On September 9, 2006, defense counsel filed his Notice of Intent to rely on the Defense of Insanity, pursuant to Rule 3.216(c) (R1.31).

On September 26, 2006, the State filed its motion to compel Dr. Merry Haber's report re: Insanity (R1.33). On September 26, 2006, the court granted the State's motion to compel (R1.37).

On November 14, 2006, the State filed its Motion for Jury Instruction on Voluntary Intoxication; Motion for Order in Limine Precluding any Suggestion or Argument as to Voluntary Intoxication; Motion for Order in Limine Precluding any Mention of Defendant's Self-Serving Hearsay Statements; Motion for Order in Limine Precluding any Mention of Prior Bad Acts; Motion for Order in Limine Precluding any Reference to the Possible Sentence That May Be Imposed Upon Conviction; Motion for Order in Limine Precluding any Mention of Not Guilty Plea; Motion for Order in Limine Precluding any Comment Raising a Mental Health Defense; Motion for Order in Limine Precluding any Request by Defense for a Jury Pardon on Behalf of the

Defendant; Motion for Order in Limine Precluding any Mention by Defense of the Defendant's Remorse; Motion for Order in Limine Precluding any Comment or Opinion by any Witness as to Another's Credibility or Truthfulness; Motion for Order in Limine Precluding Reference to the State Not Calling a Witness Equally Available to Both Parties; Motion for Order in Limine Precluding Reference to Drugs Used By The Victim (R1.42-67) and Motion for Order in Limine Precluding any Questions About Prior Convictions (R1.72-73).

Petitioner filed his Motion in Limine to preclude the 911 tape of the victim's daughter on the grounds of hearsay (R1.69).

On November 14, 2006, the court conducted a *Faretta* Hearing based on a motion filed pro se by Petitioner to dismiss his trial counsel for ineffective assistance of counsel (R1.121-128; T.224-227). Petitioner complained in his motion that his trial counsel failed to discuss his case and trial strategy with him, and had failed to prove to him that he was ready and capable of representing Petitioner at trial. Specifically, Petitioner contended that it was his understanding that the defense of cocaine psychosis was going to be the defense strategy and that defense counsel suddenly changed the strategy and failed to advise him of his new defense. Additionally, Petitioner complained that Dr. Merry Haber did not complete her examination of him prior to trial. The Court denied Petitioner's motion (R1.74).

On November 14, 2006, the case proceeded to trial. Several witnesses testified for the State

Specifically, Daisy Hicks, Sherman Brown, Officer Michael Phillips and Dr. Kenny Hutchinson (R1.73-74). The State rested its case (R1.74). Petitioner moved for judgment of acquittal, which was denied by the court (R1.76). The court voir dired Petitioner regarding his right to testify or not. Petitioner acknowledged he understood his right to testify and waived that right (R.76). Petitioner again moved for judgment of acquittal, which was denied by the court (R1.77). At the close of all the evidence the court instructed the jury as to the elements of second degree murder and the lesser included offense of manslaughter, as well as the other basic jury instructions (R1.130-149). On November 15, 2006, Petitioner was found guilty of second degree murder R1.150; T. 411-412).

On December 5, 2006, Petitioner filed his renewed motion for judgment of acquittal (R2.155). On December 20, 2006, the Department of Corrections (hereinafter "DOC") filed with the Court its Pre-sentence Investigation Report (hereinafter "PSI") (R2.158). The PSI contained a brief statement concerning the facts which indicated that Petitioner had been "smoking crack and drinking cheap wine" before the incident occurred (R2.159). In preparing the PSI, the DOC did not provide any information pertaining to Petitioner's juvenile criminal, medical or mental history. Specifically, the PSI indicated that "Due to the subject's age, no juvenile record was available" (R2-160). Additionally, the PSI makes reference to Petitioner's physical and mental health by inserting a remark indicating that Petitioner stated that in 1996 he suffered from stress and depression while incarcerated in South Florida

Reception Center and that Petitioner stated that at the time he was prescribed some medication but that he does not recall what the medication was named (R2-164). Additionally, the PSI indicated that Petitioner stated that he began using marijuana and drinking alcohol at age 16, cocaine at age 17. Petitioner indicated that he became addicted to cocaine (R2-164).

On December 26, 2006, Petitioner was sentenced to 45 years in State prison as a habitual offender and concurrent with Case No: F03-7778 for which he was on probation. The court held a violation of probation hearing and found that Petitioner violated the terms and conditions of his felony probation and sentenced Petitioner to six years state prison to run concurrent with Case No: F04-10361 (R2-169-171, T. 27). On December 26, 2006, Petitioner timely filed his Notice of Appeal (R2-167).

C. Appellate Review:

Petitioner challenged his conviction and sentence on appeal to the Florida Third District Court of Appeal. In that appeal, he raised the following errors:

I. WHETHER THE EVIDENCE WAS SUFFICIENT TO SUPPORT A CONVICTION FOR SECOND DEGREE MURDER?

II. WHETHER THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY NOT CONDUCTING A PROPER *FARETTA* HEARING?

III. WHETHER APPELLANT WAS DENIED COMPETENT MENTAL HEALTH EXPERT ASSISTANCE AT THE TIME OF TRIAL WHERE APPELLANT DEMONSTRATED TO THE COURT THAT HIS INSANITY AT TIME OF OFFENSE WOULD BE A SIGNIFICANT FACTOR?

IV. WHETHER THE TRIAL COURT COMMITTED REVERSIBLE ERROR AT SENTENCING BY NOT REQUIRING A PROPER AND COMPLETE PRESENTENCE INVESTIGATION REPORT PRIOR TO SENTENCING APPELLANT TO 45 YEARS STATE PRISON AND BY RELYING ON ERRONEOUS STATEMENTS BY THE STATE REGARDING APPELANT'S PRIORS THAT QUALIFIED HIM AS A HABITUAL OFFENDER?

The Third District Court of Appeal affirmed the conviction and sentence per curiam but on rehearing withdrew that opinion and substituted a written opinion in its place again affirming Petitioner's conviction. The only issue addressed was whether the

trial court committed reversible error by not conducting a proper *Faretta* [1]hearing.

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REASONS FOR GRANTING THE WRIT

THE FLORIDA COURTS FAILED TO FOLLOW *FARETTA VERSUS CALIFORNIA* AFTER ETITIONER REQUESTED THE RIGHT TO DISCHARGE HIS COURT APPOINTED LAWYER

A. Introduction:

This case involves the Florida Courts' denial of Petitioner's basic rights to due process of law under the Fourteenth Amendment by failure to follow the procedures set forth in *Nelson v. State*, 274 So.2d 256 (Fla. 4th DCA 1973) and *Faretta v. California*, 422 U.S. 806, 835-36 (1975), and its progeny that apply when a defendant unequivocally requests the trial court to discharge his trial counsel and proceed with self-representation.

Petitioner contends that the trial court committed reversible error when it failed to conduct a proper *Faretta* hearing upon Petitioner's pro se motion to dismiss his trial counsel for ineffective

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[1] Faretta v. California, 422 U.S. 806, 835-36 (1975).

assistance of counsel. Upon receipt of Petitioner's pro se motion, the court questioned Petitioner as to why he wanted to dismiss his counsel. The following occurred:

The Court: The court at this time is conducting a *Faretta* inquiry. Yes, sir?
The Defendant: As listed on the paper there, I feel as though I was misled as far as what proper defense I was going to have up until the point of the evaluation. And being terminated, you know what I'm saying, without my knowledge, you know what I am saying, the doctor not completing her duty.

And also, sir, advising my attorney and even the clerk, there's a written letter attached, sending it to the – his office, letting him know prior, before this here, that she didn't finish. Her office, I'm saying her job.

So you know, with all that saying, sir, I just don't feel as though, you what I'm saying, I'm properly being dealt right, being that my life is on the line.
The Court: Is that any other reason why you are requesting new counsel? As it seems like the primary reason -- and don't let me put words in your mouth -- the primary reason is that you, as you explained yesterday, you don't feel that the evaluation with respect to the not guilty by reason of insanity has been properly pursued.
The Defendant: Not -- not that alone, sir.
The Court: Well, what else?
The Defendant: That I just feel as though the doctor didn't complete it.
The Court: Okay. Because what the doctor was completing was an evaluation to determine whether

or not cocaine psychosis, meaning whether or not you were under the influence of cocaine---
The Defendant: Right.
The Court: -- to such an extent, so that your lawyer can raise the defense of not guilty by reason of insanity. Okay?
The Defendant: Yes.
The Court: You feel that that's the main reason why you need new counsel.
The Defendant: You.
The Court: All right. Is there any other reason?
The Defendant: No, just --just--not necessarily. You know, just that over a period of time, I haven't --- I've requested like a update on what was going on, you know what I'm saying, as far as the depositions. I got all of that information late.
The Court: You got all the information.
The Defendant: late.
The Court: But you got all the information.
The Defendant: I still doesn't (sic) have the deposition from the police officers.
The Court: Okay. But he did take the depositions.
The Defendant: As far as from the lay witnesses?
The Court: Your lawyer.
The Defendant: Yes.
The Court: Okay. Is there anything else?
The Defendant: And basically, you know, I just--- and also I requested case law referencing to her, the defense that he was going to use. And I haven't seen that yet.
The Court: Anything else?
The Defendant: No, not really, I mean off the top of my head.
The Court: Your motion is denied. The Court finds that you are properly represented. The Court will also

note that fact that I brought defense counsel before this court,
I can't even count the number of times, and we've had conversations about this specific defense. This is a 2004 case, and this court is --- we're going forward. Your record has been made, but we are going forward.
The Defendant: Okay.
(T.224-227)

[W]here a defendant, before the commencement of trial, makes it appear to the trial judge that he desires to discharge his court appointed counsel, the trial judge, in order to protect the indigent's right to effective assistance of counsel, should make an inquiry of the defendant as to the reason for the request to discharge. If competency of counsel is assigned by the defendant as the reason for the request the trial judge should make a sufficient inquiry of the defendant and his appointed counsel to determine whether or not there is reasonable cause to believe that the court appointed counsel is not rendering effective assistance to the defendant. If reasonable cause for such belief appears, the court should make a finding to that effect on the record and appoint a substitute attorney who should be allowed adequate time to prepare the defense. If no reasonable basis appears for a finding of ineffective representation, the trial court should so states on the record and advise the defendant that if he discharges his original counsel that State may not thereafter be required to appoint a substitute counsel. See *Wilder v. State*, Fla. App.1963, 156 So.2d 395,397. If the defendant continues to demand a dismissal of his court appointed counsel, the trial judge may in his discretion discharge counsel and require the

defendant to proceed to trial without representation by court appointed counsel.

Neslon v. State, 274 So.2d 256, 258-59 (Fla.4th DCA 1973).

The mere expression of a desire to discharge appointed counsel necessitates an inquiry "as to the reason for the request to discharge." *Id.*

Here, the court conducted a *Nelson* hearing by inquiring as to the nature of the conflict between Petitioner and his trial counsel. It did not, however, conduct a proper *Faretta* hearing.

At the conclusion of the hearing, the court made a finding that Petitioner was being properly represented and thereafter denied Petitioner's motion to dismiss his trial counsel. To do so without further inquiry was reversible error. The Third District Court of Appeal of Florida has previously held "If court-appointed counsel is found to be rendering effective assistance, and the defendant insists that he still wanted to discharge him or her, a *Faretta* hearing is in order." *Davila v. State*, 829 So.2d 995, 996 (Fla. 3rd DCA 2002). See *Rios v. State*, 696 So.2d 469 (Fla. 2nd DCA 1997).

Here, the court stated that it was conducting a *Faretta* hearing. A trial judge is required to conduct a *Faretta* inquiry prior to allowing a defendant to proceed in a criminal trial without counsel. *Davila*, 829 at 997 (Fla.3rd DCA 2002); *State v. Young*, 626 So.2d 655, 656 (Fla.1993).

When a defendant makes his desire to represent himself at a critical stage, the trial court is obligated to conduct a *Faretta* inquiry to determine if a defendant is knowingly and intelligently waiving his right to counsel and is "aware of the dangers and disadvantages of self-representation. "*Faretta v. California*, 422 U.S. 806, 835, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975). Fla. R. Crim. P. 3.111(d). Although an adequate *Faretta* hearing does not require "magic words," the trial court must ensure that the defendant has a general understanding of his rights and is proceeding with his "eyes wide open." *Wilson v. State*, 947 So.2d 1225, 1226 (Fla.1st DCA 2007); *Potts v. State*, 718 So.2d 757, 760 (Fla.1998). The failure to conduct a *Faretta* hearing is per se reversible error. *Wilson v. State*, 947 So.2d at 1227; *State v. Young*, 626 So.2d 655, 657 (Fla.1993); *Case v. State*, 865 So.2d 557 (Fla. 1st DCA 2004); *Sandoval v. State*, 884 So.2d 214 (Fla. 2nd DCA 2004).

In this case, the Florida trial court never advised Petitioner that he had the right to self-representation even though the court was aware that Petitioner no longer wanted his trial counsel to represent him. Thus, failure to conduct a proper *Faretta* hearing was per se reversible error and Petitioner should be granted a new trial.

APPELLATE APPROVAL OF *FARETTA* VIOLATION

The Third District Court of Appeal of Florida approved in its written opinion the lower court's ruling regarding the trial court's failure to discharge Petitioner's trial counsel and permit him to represent

himself at trial. The District Court of Appeal held that the record failed to demonstrate that Petitioner's request for self-representation was unequivocal.

It is clear that the Florida Appellate Court simply overlooked the fact that the trial court judge misstated to Petitioner the type of hearing that it was conducting. The trial judge told Petitioner that he was conducting a *Faretta* hearing when in fact he was conducting a *Nelson* hearing. Petitioner was not an attorney and did not know
the difference between the two procedures. Petitioner was following the court's lead and was respectful to the court by simply answering the court's questions. To Petitioner's dismay, the court blindsided him by *not* conducting a proper *Faretta* hearing wherein the court would have been required to advise Petitioner of his right to self-representation if he still chose to discharge his trial counsel after the court's finding that his trial counsel was ineffective.

As a result of the misconduct of the Florida Courts, discretionary review by this Court is paramount. Florida Courts need to understand the importance of due process and the importance of protecting the constitutional rights of the accused. Defendants, untrained in the law, like Petitioner, do not understand the legal jargon spoken by those having a legal education. Petitioner did not understand the trial court when it said that it was holding a *Faretta* hearing, which it did not.

If Florida courts are permitted to void important civil rights of a defendant and, while hiding behind the lack of specific "words" not used by a

defendant, while at the same time disregarding those very words written in a pro se motion to the court requesting the discharge of his counsel and requesting self-representation, then blame that defendant for being equivocal in his request for self-representation, no one defendant who lacks formal training in the law shall be safe.

*

CONCLUSION

The decision of the Third District Court of Appeal of Florida is inconsistent with the fundamental notions of the Fourteenth right to due process and threatens the principles of fairness and justice. Certiorari review is necessary to correct the erroneous assessment of the facts by the Florida Courts as to when it is necessary to conduct a proper *Faretta* hearing and what steps the lower court is required to take in order to insure and protect a defendant's constitutional rights.

Respectfully submitted,
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App. 1

THIRD DISTRICT COURT OF APPEAL
State of Florida, January Term, A.D. 2009

Opinion filed March 25, 2009
Not final until disposition of timely filed motion for rehearing.

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Case No: 3D06-3205
Consolidated: 3D06-3204
Lower Tribunal Nos: 03-7778; 04-10361

*

James C. Marshall,
Appellant,
vs.
The State of Florida,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, William Thomas, Judge.

Roderick D. Vereen, for appellant.

Bill McCollum, Attorney General, and Timothy R.M. Thomas, Assistant Attorney General, for appellee.

Before COPE, SHEPHERD, and SUAREZ, JJ.

PER CURIAM.

Affirmed.

App. 3

THIRD DISTRICT COURT OF APPEAL
State of Florida, January Term, A.D. 2009

Opinion filed July 22, 2009

*

Case No: 3D06-3205
Consolidated: 3D06-3204
Lower Tribunal Nos: 03-7778; 04-10361

*

James C. Marshall,
Appellant,
vs.
The State of Florida,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, William Thomas, Judge.

Roderick D. Vereen, for appellant.

Bill McCollum, Attorney General, and Timothy R.M. Thomas, Assistant Attorney General, for appellee.

Before COPE, SHEPHERD, and SUAREZ, JJ.

On Motion for Rehearing

SUAREZ, J.

We grant James C. Marshall's motion for rehearing, withdraw our previously rendered per curiam opinion dated March 25, 2009, and substitute the following in its place:

James C. Marshall appeals from his conviction for one count of second degree murder. We affirm.

We address only the claim that the trial court committed reversible error by not conducting a proper Faretta[2] hearing. Based upon our review of the record, Marshall's alleged requests for self-representation were at best equivocal; he was not entitled to an inquiry on the subject of self-representation under Faretta. See Rios v. State, 696 So.2d 469 (Fla. 2d DCA 1997) (holding that if court-appointed counsel is found, after a proper Nelson inquiry[3], to be rendering effective assistance and the defendant insists that he still wants to discharge him or her, then a Faretta hearing is in order); accord Davilla v. State, 829 So.2d 995 (Fla. 3d DCA 2002) (finding that because there was no unequivocal request for self-representation, the defendant was not entitled to an inquiry on the subject of self-representation under Faretta). Further, we cannot conclude from the record before us that the trial court abused its discretion in refusing to permit Marshall to discharge his counsel after holding a proper Nelson hearing. See Rios, 696 So.2d at 471.

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[1] Faretta v. California, 422 U.S. 806, 835-36 (1975).
[2] Nelson v. State, 274 So.2d 256 (Fla. 4th DCA 1973)

We affirm all remaining issues on appeal.

Affirmed.